

THE INSURANCE CODE OF 1956 (EXCERPT)

Act 218 of 1956

CHAPTER 13

HOLDING COMPANIES

500.1301 Insurance holding companies; definitions.

Sec. 1301. As used in this chapter:

(a) "Insurer" means that term as defined in section 106, except that it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state, fraternal benefit societies, or nonprofit health care corporations.

(b) "Person" means that term as defined in section 114, except that it does not include any securities broker performing no more than the usual and customary broker's function, so long as the securities broker holds less than 10% of the voting securities of an insurer or of any person that controls an insurer.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1305 Domestic insurers; organization or acquisition of subsidiaries; book of business; value; admitted asset; limitation; amortization; annual test; definition; authority of commissioner.

Sec. 1305. (1) A domestic insurer, either by itself or in cooperation with 1 or more persons, may organize or acquire 1 or more subsidiaries if consistent with other provisions of this act. These subsidiaries may conduct any kind of business and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer. This provision shall not be construed to provide authority for conduct or activities by these subsidiaries that would otherwise be inconsistent with other provisions of this act.

(2) Except as otherwise provided in subsection (3), if a domestic insurer acquires through a business acquisition or a reinsurance transaction a book of business that includes life insurance or other business written by a life insurance company, and the book of business has a readily determinable market value represented by the present value of the future after-tax profits that will be earned on the book of business in force at the date of the acquisition, the value of the book of business acquired, above any amount previously recognized as an admitted asset under this section or that may be permitted under accounting practices and procedures designated by the commissioner under section 438, may be recognized with the prior approval of the commissioner as an admitted asset in the annual statement filed pursuant to section 438. The commissioner shall make a determination regarding the admissibility of this asset within 60 days after receiving a filing with supporting documentation, in a form satisfactory to the commissioner, from the domestic insurer requesting such approval.

(3) Notwithstanding subsection (2), a domestic insurer may recognize as an admitted asset in the annual statement filed pursuant to section 438 the value of a book of business described in subsection (2) without the prior approval of the commissioner, if the domestic insurer files a written notice with the commissioner of its intent to record the value of the book of business acquired as an admitted asset and provides a certification by an officer of the domestic insurer that, as of the date of the notice, the domestic insurer meets all of the following criteria:

(a) The insurer's most recent a.m. best financial rating is at least an "A".

(b) The insurer has at least 1 additional rating of at least an "A" or its equivalent, as assigned by a rating organization included on the national association of insurance commissioners' list of nationally recognized statistical organizations and approved by the commissioner.

(c) Following the acquisition or reinsurance transaction, the insurer will possess a minimum capital and surplus of at least \$1,000,000,000.00, excluding from the insurer's capital and surplus the pro forma effect of the total value of the book of business to be recognized as an admitted asset by the domestic insurer.

(d) The insurer's total adjusted risk based capital exceeds 5 times the company's authorized control level risk based capital.

(e) The insurer's certificate of authority has not been suspended, revoked, or limited under section 436 at any time during the 5-year period immediately preceding the acquisition or reinsurance transaction.

(f) The insurer is not subject to an analyst team system level A or B designation by the national association of insurance commissioners for the year immediately preceding the acquisition or reinsurance transaction.

(g) Following the acquisition or reinsurance transaction, the insurer will meet the asset requirement under section 901.

(4) The value of the book of business acquired as described in subsection (2) that a domestic insurer may recognize as an admitted asset shall not exceed the lesser of 50% of capital and surplus or the following:

(a) Twenty percent of that adjusted capital and surplus that is less than or equal to 500% of authorized control level risk based capital, plus

(b) Eighty-five percent of that adjusted capital and surplus that is greater than 500%, but less than or equal to 600%, of authorized control level risk based capital, plus

(c) Ninety-five percent of that adjusted capital and surplus that is greater than 600%, but less than or equal to 700%, of authorized control level risk based capital, plus

(d) One hundred percent of that adjusted capital and surplus that is greater than 700% of authorized control level risk based capital.

(5) The value of the book of business acquired as described in subsection (2) shall be amortized pursuant to accounting practices and procedures designated by the commissioner under section 438. The value of the book of business acquired in excess of the amount allowable under this section shall not be an admitted asset in the annual statement filed pursuant to section 438.

(6) A domestic insurer that recognizes as an admitted asset in the annual statement filed pursuant to section 438 any value of business acquired shall annually test the value of the asset for impairment as part of the asset adequacy testing and shall reference this testing in the opinion filed under section 830a.

(7) As used in subsection (4), "adjusted capital and surplus" means capital and surplus as of December 31 of the immediately preceding year, adjusted to exclude any net positive goodwill exclusive of any component of the goodwill relating to the existing value of the book of business acquired, electronic data processing equipment, operating system software, and net deferred tax assets.

(8) Nothing in this section shall be construed to limit the commissioner's authority under sections 436 and 436a.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2006, Act 55, Imd. Eff. Mar. 9, 2006.

Popular name: Act 218

500.1311 Merging with or acquiring control of domestic insurer; statement; filing notification; "domestic insurer" explained.

Sec. 1311. (1) A person other than the issuer shall not make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person directly or indirectly, or by conversion or by exercise of any right to acquire, would be in control of the insurer. A person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time an offer, request, or invitation is made or an agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer which has sent to its shareholders, a statement containing the information required by this chapter and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this chapter.

(2) The person who proposes to enter into an agreement to merge with or otherwise acquire control of a domestic insurer shall file a notification with the commissioner, in such form and containing the information prescribed by applicable rule promulgated or order issued by the commissioner.

(3) For purposes of this section through section 1319, a domestic insurer shall include any person controlling a domestic insurer and any foreign insurer whose written insurance premium in this state for each of the most recent 3 years exceeds the premiums written in its state of domicile and whose written premium in this state was 20% or more of its total written premium in each of the most recent 3 years.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1990, Act 85, Imd. Eff. May 29, 1990;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1312 Statement filed with commissioner; contents.

Sec. 1312. The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in section 1311 is to be effected, hereinafter called the acquiring party. If the person is an individual, his or her principal occupation, all offices and positions held during the past 5 years, any civil judgments against the person for \$25,000.00 or more in civil fines or penalties or injunctive or other equitable

relief, and any conviction of crimes other than minor traffic violations during the past 10 years. If the person is not an individual, a report of the nature of its business operations during the past 5 years or for such lesser period as the person and any predecessors of the person have been in existence, an informative description of the business intended to be done by the person and the person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the person or who perform or will perform functions appropriate to those positions. The list shall include for each individual the individual's principal occupation, all offices and positions held during the past 5 years, any civil judgments against the person for \$25,000.00 or more in civil fines or penalties or injunctive or other equitable relief, and any conviction of crimes other than minor traffic violations during the past 10 years.

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for such purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. If a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall be disclosed but remain confidential if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years or for such lesser period as the acquiring party and any predecessors of the acquiring party have been in existence and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

(d) Any plans or proposals that each acquiring party may have under consideration concerning the insurer's business operations, including, but not limited to, plans or proposals to liquidate the insurer, to sell its assets, to merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in section 1311 that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in section 1311, and a statement as to how the proposal's fairness was arrived at.

(f) The amount of each class of any security referred to in section 1311 that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements, or understanding concerning any security referred to in section 1311 in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements, or understanding have been entered into.

(h) A description of the purchase of any security referred to in section 1311 during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security.

(i) A description of any recommendations to purchase any security referred to in section 1311 made during the 12 calendar months preceding the filing of the statement, by any acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in section 1311 and additional related distributed soliciting material.

(k) The terms of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in section 1311 for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers.

(l) Such additional information as the commissioner prescribes by order or rule as necessary or appropriate for the protection of the insurer's policyholders and securityholders or in the public interest.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1313 Partnership, syndicate or other group; statement filed with commissioner, amendment.

Sec. 1313. (1) If the person required to file the statement referred to in section 1311 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information required by section 1312 shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person who controls a partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in section 1311 is a

corporation, the commissioner may require that the information required by section 1312 shall be given with respect to the corporation, each officer and director of the corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

(2) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to section 1311, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within 2 business days after the person learns of the change. The insurer shall send the amendment to its shareholders.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1314 Alternative filing materials.

Sec. 1314. If any offer, request, invitation, agreement or acquisition referred to in section 1311 is proposed to be made by means of a registration statement under the securities act of 1933 or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in section 1311 may utilize such documents in furnishing the information called for by that statement.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1315 Merger or acquisition of control; approval of commissioner; hearing.

Sec. 1315. (1) The commissioner shall approve any merger or other acquisition of control referred to in section 1311 of a domestic insurer unless the commissioner determines on the basis of information furnished to the commissioner on the merger or other acquisition of control 1 or more of the following:

(a) After the change of control the domestic insurer referred to in section 1311 would not be able to satisfy the requirements for the issuance of a certificate of authority to write the types of insurance for which it is presently authorized.

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly in this state.

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party.

(d) The terms of the offer, request, invitation, agreement, or acquisition referred to in section 1311 are unfair and unreasonable to the insurer's policyholders or securityholders.

(e) The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to the insurer's policyholders, and not in the public interest.

(f) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the insurer's policyholders or the general public to permit the merger or other acquisition of control.

(2) A person aggrieved by the commissioner's order under this section shall be entitled to a contested case hearing before the commissioner pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The commissioner shall make a final decision within 30 days after the conclusion of the hearing.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1316 Information to shareholders; expense; bond; examination or investigation.

Sec. 1316. All statements, amendments, or other material filed pursuant to section 1311 or 1312 and all notices of hearings held pursuant to section 1315, shall be mailed by the insurer to its shareholders within 5 business days after the insurer has received them. The expenses of mailing shall be borne by the person making the filing. As security for the payment of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner. At the acquiring party's expense, the commissioner may conduct such examination or investigation as the commissioner is empowered to do under section 224.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1317 Exemptions.

Sec. 1317. The provisions of sections 1311 to 1319 do not apply to:

- (a) Any transaction subject to the provisions of chapter 76.
- (b) Any offer, request, invitation, agreement, or acquisition that the commissioner by order exempts as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer or as otherwise not comprehended within the purposes of sections 1311 to 1319.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1318 Violations.

Sec. 1318. The following are violations of sections 1311 to 1319:

- (a) Failure to file any statement, amendment or other material required to be filed pursuant to sections 1311 or 1312.
- (b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1319 Jurisdiction of actions arising out of violations; consent to process.

Sec. 1319. The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files or fails to file a statement with the commissioner as required by this chapter and over all actions involving the person arising out of violations of sections 1311 to 1318. Each such person shall be considered to have performed acts equivalent to and constituting an appointment by him or her of the commissioner to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his or her last known address.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1324 Insurers subject to registration; time.

Sec. 1324. An insurer that is a member of an insurance holding company system and is authorized to do business in this state shall register with the commissioner. A foreign insurer is not required to register if it is subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and sections 1325 to 1343 and that exempt insurers domiciled in this state from the requirements of registration or that permit insurers domiciled in this state to satisfy the registration requirement by filing copies of materials required to be filed under this chapter. An insurer subject to registration under this chapter shall register by May 1 of each year for the immediately preceding calendar year unless the commissioner for good cause shown extends the time for registration. The commissioner may require an authorized insurer that is a member of a holding company system not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of domiciliary jurisdiction.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1990, Act 85, Imd. Eff. May 29, 1990;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1325 Registration statement; form; contents; other reports or information required.

Sec. 1325. (1) An insurer subject to registration shall file a registration statement on a form provided by the commissioner containing the following current information:

- (a) The capital structure, comprehensive financial condition, ownership, and management of the insurer and any person controlling the insurer.
- (b) The identity and relationship of every member of the insurance holding company system.
- (c) The following agreements in force, relationships subsisting, and transactions currently outstanding or that have occurred during the last calendar year between the insurer and its affiliates:
 - (i) Loans, other investments or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.
 - (ii) Purchases, sales, or exchanges of assets.

- (iii) Transactions not in the ordinary course of business.
- (iv) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.
- (v) All management and service contracts and all cost sharing arrangements.
- (vi) Reinsurance agreements.
- (vii) Dividends and other distributions to shareholders.
- (viii) Consolidated tax allocation agreements.
- (d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding system.
- (e) A summary outlining all items in the current registration statement representing changes from the prior registration statement.
- (f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.
- (2) If a person ultimately controlling the insurer or intermediately controlling the insurer is registered on a national stock exchange or is otherwise required to make periodic reports to the United States securities and exchange commission or other instrumentality of a state or the government of the United States or of any foreign nation or jurisdiction regulating the financial conduct of that person, the insurer shall file such reports with the commissioner in addition to other information required by the commissioner.
- (3) If the person or persons ultimately controlling the insurer is an individual or group of individuals or is a person not required to make reports described in subsection (2), that person shall be required to file under oath with the commissioner on a form provided by the commissioner information disclosing the financial position of that person. A person who knowingly misrepresents the financial information provided to the commissioner shall be guilty of a felony and, upon conviction, shall be punished by a fine not to exceed \$5,000.00 or by imprisonment for a term not to exceed 5 years, or by both such fine and imprisonment in the discretion of the court. The ultimate controlling person or persons shall not be required to file a financial position form if either:
 - (a) There has not been a change of control of the insurer for a minimum of 5 years and the insurer maintains a minimum surplus amount of \$25,000,000.00 if the insurer has achieved at least an "A" rating by the A.M. Best company or maintains a minimum surplus of \$75,000,000.00 if the insurer has achieved at least an "A-" rating by the A.M. Best company.
 - (b) The commissioner accepts the filing made by the ultimate controlling person of the periodic reports that are filed by a person who is an intermediary member within the insurance holding company system between the insurer and the individual or group of individuals controlling the insurer, with the United States securities and exchange commission or other instrumentality of a state or the government of the United States or any foreign nation or jurisdiction regulating the financial conduct of that person.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1326 Registration statement; nonmaterial information not disclosed.

Sec. 1326. No information need be disclosed on the registration statement filed pursuant to section 1325 if the information is not material for the purposes of sections 1324 to 1343 inclusive. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit or investments, involving 1/2 of 1% or less of an insurer's admitted assets as of December 31 next preceding are not material for purposes of sections 1324 to 1343 inclusive.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1327 Registration statement; reporting material changes or additions and distributions to shareholders.

Sec. 1327. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition. Subject to section 1343, each registered insurer shall report all dividends and other distributions to shareholders within 2 business days following the declaration.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1328 Registration; termination.

Sec. 1328. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1329 Consolidated registration statements.

Sec. 1329. The commissioner may require or allow 2 or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1330 Registration on behalf of affiliated insurer.

Sec. 1330. The commissioner may allow an insurer authorized to do business in this state which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under section 1324 and to file all information and material required to be filed under this chapter.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1331 Exemptions.

Sec. 1331. The provisions of sections 1324 to 1333 shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule or order exempts the insurer.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1332 Petition for disclaimer of affiliation; filing; contents; effect; disallowance.

Sec. 1332. Any person may file with the commissioner a petition for disclaimer of affiliation with an authorized insurer or an insurer or any member of an insurance holding company system may file such a petition for disclaimer. The petition for disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and shall be subject to approval by the commissioner. The burden of proof for establishing that an affiliation does not exist shall rest with the petitioner. After a petition for disclaimer is filed with and approved by the commissioner, the insurer is relieved of any duty to register or report under this chapter that may arise out of the insurer's relationship with the person unless the commissioner subsequently disallows the disclaimer. The commissioner may disallow a disclaimer that has been previously approved only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1994, Act 227, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1333 Registration; failure to file.

Sec. 1333. The failure to file a registration statement or any amendment thereto required by sections 1324 to 1333 within the time specified for such filing is a violation of this chapter.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1334 Person subject to registration; providing information to insurer.

Sec. 1334. A person within an insurance holding company system subject to registration is required to provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1341 Transactions within holding company system; certain insurers as party; standards; prior approval; transactions entered into by domestic insurers; notification; separate transactions; review by commissioner; total investment exceeding 10% of corporation's

voting securities.

Sec. 1341. (1) Transactions within a holding company system to which an insurer domiciled in this state or any foreign insurer whose written insurance premium in this state for each of the most recent 3 years exceeds the premiums written in its state of domicile and whose written premium in this state was 20% or more of its total written premium in each of the most recent 3 years is a party or with respect to which the assets or liabilities of these insurers are affected are subject to all of the following standards:

- (a) The terms shall be fair and reasonable.
- (b) The charges or fees for services performed shall be reasonable.
- (c) The expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.
- (d) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs so that the insurer continues to comply with section 403.

(2) The commissioner's prior approval shall be required for sales, purchases, exchanges, loans, extensions of credit, or investments, involving 5% or more of the insurer's assets at the immediately preceding year's end, between a domestic controlled insurer and any person in its holding company system.

(3) A domestic insurer and any person in its holding company system shall not enter into the following transactions with each other unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days, or a shorter period as the commissioner allows, prior to entering into the transaction and the commissioner has not disapproved it within that period:

(a) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transaction is equal to or greater than the lesser of 3% of the insurer's assets or 25% of capital and surplus as of December 31 of the immediately preceding year.

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transaction is equal to or greater than the lesser of 3% of the insurer's assets or 25% of capital and surplus as of December 31 of the immediately preceding year.

(c) Reinsurance treaties or agreements.

(d) Rendering of services on a regular systematic basis.

(e) Any material transactions, specified by regulation, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(4) Nothing contained in subsection (3) shall be considered to authorize or permit any transactions that, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(5) A domestic insurer shall not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that the separate transactions were entered into over any relevant period for that purpose, he or she may exercise his or her authority under section 1371.

(6) In reviewing a transaction pursuant to subsection (2), the commissioner shall consider whether the transaction complies with the standards set forth in subsection (1) and whether it may otherwise adversely affect the interests of policyholders, creditors, or the public.

(7) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any 1 corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994;—Am. 1994, Act 443, Imd. Eff. Jan. 10, 1995.

Popular name: Act 218

500.1342 Application of MCL 500.436a.

Sec. 1342. In determining whether an insurer remains safe, reliable, and entitled to public confidence for the purposes of sections 1324 to 1343, the commissioner shall apply the standards of section 436a.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1343 Review by commissioner of ordinary shareholder dividends paid by domestic insurers; determination of reasonableness; factors; limiting or disallowing payment of shareholder dividends; declaration or payment from earned surplus; domestic insurer as member of insurance holding company system; extraordinary distribution to shareholders; hearing.

Sec. 1343. (1) Each year the commissioner shall review the ordinary shareholder dividends paid by domestic insurers to determine whether each insurer's surplus following those dividends is reasonable in relation to the insurer's outstanding liabilities and adequate to its needs so that it continues to comply with section 403. In conducting the review and making the determination, the commissioner shall consider the following factors in addition to the provisions of section 436a:

(a) The adequacy of the level of surplus as regards policyholders remaining after the dividend payment or payments.

(b) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions and reserve destrengthening.

(c) The quality and liquidity of investments in subsidiaries. The commissioner may discount any of those investments or refuse to consider the investment as an asset for purposes of determining the adequacy of surplus as regards policyholders if the investment so warrants.

(2) If the commissioner determines that an insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the commissioner shall limit or disallow the payment of shareholder dividends.

(3) Shareholder dividends shall be declared or paid only from earned surplus, unless the commissioner approves the dividend prior to payment. The commissioner shall consider whether the dividend will be paid from the insurer's net gain from operations if the insurer is a life insurer, or the insurer's net income if the insurer is not a life insurer, for the 12-month period ending December 31 of the immediately preceding year. For purposes of this subsection, earned surplus excludes surplus arising from unrealized capital gains or a revaluation of assets.

(4) Any domestic insurer that is a member of an insurance holding company system and declares a shareholder dividend shall report the dividend to the commissioner within 5 business days after declaring the dividend and at least 10 business days beginning from the date of receipt by the commissioner before the payment.

(5) An insurer subject to registration under section 1324 shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration and has not disapproved or has approved the payment within that period. If the commissioner, applying the criteria in subsection (1), determines that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the commissioner may, prior to the expiration of the 30-day period described in this subsection, enter an order prohibiting the payment of the dividend.

(6) An extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of the insurer's surplus as regards policyholders as of December 31 of the immediately preceding year, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending December 31 of the immediately preceding year but shall not include pro rata distributions of any class of the insurer's own securities.

(7) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration shall confer no rights upon shareholders until the commissioner has approved or has not disapproved the payment of the dividend or distribution within the 30-day period.

(8) Notwithstanding subsections (5) through (7), a dividend shall not be declared and paid by an insurer to an affiliate if after the payment the insurer could not satisfy the standards set forth in section 403.

(9) An insurer aggrieved by the commissioner's determination or order under this section is entitled to a contested case hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to be held no later than 10 days

after receipt of the insurer's request. The commissioner's determination or order shall remain in effect except as modified by the commissioner during the pendency of the hearing and until a final decision by the commissioner. The commissioner shall render a final decision within 30 days after the conclusion of the hearing.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994;—Am. 1994, Act 443, Imd. Eff. Jan. 10, 1995;—Am. 1995, Act 219, Imd. Eff. Dec. 1, 1995.

Popular name: Act 218

500.1344 Officers and directors; obligation or liability; common management or cooperative or joint use of personnel, property, or services.

Sec. 1344. (1) Notwithstanding the control of a domestic insurer by any person, the insurer's officers and directors shall not be relieved of any obligation or liability to which they would otherwise be subject by law and the insurer shall be managed so as to assure its separate operating identity consistent with this act.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with 1 or more other persons under arrangements meeting the standards of this act.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1351 Examination of insurer or affiliates; experts; expenses.

Sec. 1351. (1) Subject to the limitation contained in this section and in addition to the powers that the commissioner has under chapters 2 and 4 relating to the examination of insurers, the commissioner may order any insurer registered under section 1324 to produce records, books, or other information papers in the possession of the insurer or its affiliates as are necessary to ascertain the insurer's financial condition or legality of conduct. If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

(2) The commissioner may retain at the registered insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1). The expense of the attorneys, actuaries, accountants, and other experts shall be certified by the commissioner and paid as prescribed in sections 216 and 224. The person retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) shall be liable for and shall pay the expense of the examination in accordance with sections 216 and 224.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1355 Examination of insurer or affiliates; confidentiality of information, written consent; notice, publication in interest of public.

Sec. 1355. All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 1351 and all information reported pursuant to sections 1324 to 1333 shall be given confidential treatment, is not subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains, unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he deems appropriate.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1361 Issuance of rules and orders.

Sec. 1361. Upon notice and opportunity for all interested persons to be heard, the commissioner may promulgate rules and issue orders as are necessary to carry out the provisions of this chapter.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

Administrative rules: R 500.701 et seq. of the Michigan Administrative Code.

500.1365 Injunctions; violation of chapter, rule or order.

Sec. 1365. When it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule or order issued by the commissioner, he may apply to the circuit court for the county in which the principal office of the insurer is located or if the insurer has no such office in this state then to the circuit court for Ingham county for an order enjoining the insurer or the director, officer, employee or agent thereof from violating or continuing to violate this chapter, rule or order and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1367 Voting certain securities prohibited; injunction.

Sec. 1367. A security that is the subject of any agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of this chapter or of any rule or order issued by the commissioner, shall not be voted at any shareholders' meeting or counted for quorum purposes and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding. An action taken at the meeting shall not be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless so ordered by the court. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of this chapter or of any rule or order issued by the commissioner, the insurer or the commissioner may apply to the Ingham county circuit court or to the circuit court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of sections 1311 to 1319 or any rule or order issued by the commissioner to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1368 Voting securities in violation of chapter; sequestration of securities.

Sec. 1368. When a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule or order issued by the commissioner, the circuit court for Ingham county or the circuit court for the county in which the insurer has its principal place of business, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner, may seize or sequester any voting securities of the insurer owned directly or indirectly by such person and issue such orders with respect thereto as may be appropriate. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers is deemed to be in this state.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218

500.1371 Violation of chapter; action by commissioner; criminal proceeding; penalty.

Sec. 1371. (1) An insurer failing, without just cause, to file a registration statement as required in this chapter shall be required, after notice and hearing, to pay a penalty of \$1,000.00 for each day's delay, up to a maximum of \$50,000.00, to be recovered by the commissioner and paid into the general fund. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) Every director or officer of an insurance holding company system who knowingly violates, knowingly participates in or assents to, or with actual knowledge permits any of the officers or agents of the insurer to engage in material acts, omissions, or transactions or make investments that have not been properly reported or submitted pursuant to section 1324, 1341, or 1343, that, with respect to material transactions, violate this chapter, or that result in material false or misleading statements to the commissioner with respect to the financial condition of the insurer or any of its affiliates shall pay, in their individual capacity, a civil forfeiture of not more than \$10,000.00 per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and other matters as justice requires. In addition, a violation of this subsection shall constitute grounds for removal of the director or officer from any position of trust or responsibility in any insurer domiciled in this state in accordance with

the procedures established in section 250.

(3) If it appears to the commissioner that an insurer subject to this chapter or any insurer's director, officer, employee, or agent has engaged in any transaction or entered into a contract that is subject to section 1341 or 1344 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any such contract, transaction, or distribution, and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(4) If it appears to the commissioner that an insurer or an insurer's director, officer, employee, or agent has committed a willful violation of this chapter, the commissioner may cause criminal proceedings to be instituted in the circuit court for the county in which the principal office of the insurer is located or if the insurer has no such office in the state, then in the Ingham county circuit court against the insurer or the insurer's responsible director, officer, employee, or agent. An insurer willfully violating this chapter may be fined not more than \$50,000.00. An individual willfully violating this chapter may be fined not more than \$10,000.00 or, if the willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than 2 years, or both.

(5) An officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statement, false report, or false filing with the intent to deceive the commissioner in the performance of his or her duties under this chapter, shall be imprisoned for not more than 2 years, or fined \$10,000.00, or both. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1375 Violation of chapter; receivership.

Sec. 1375. If it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the commissioner may proceed as provided in chapter 81 to take possession of the property of the domestic insurer and conduct the insurer's business.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1377 Liquidation or rehabilitation; recovery of certain distributions or payments.

Sec. 1377. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer both of the following:

(a) From any parent corporation, holding company, or person who otherwise controls the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock if made at any time during the 3 years preceding the petition for liquidation, conservation, or rehabilitation.

(b) Any payment in the form of an extraordinary bonus, termination settlement, or lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee if made at any time during the 3 years preceding the petition for liquidation, conservation, or rehabilitation.

(2) A distribution or payment shall not be recoverable under this section if the parent or affiliate or the director, officer, or employee shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution or payment might adversely affect the ability of the insurer to fulfill its contractual obligations. If payments were made to more than 1 director, officer, or employee, this subsection shall apply to the aggregate of those payments.

(3) A person who was a parent corporation, holding company, or a person who otherwise controlled the insurer or affiliate at the time the distribution was paid shall be liable up to the amount of distributions or payments under subsection (1) that the person received. A person who otherwise controlled the insurer at the time the distribution was declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately. If 2 or more persons are liable with respect to the same distribution, they are jointly and severally liable.

(4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) is insolvent or otherwise fails to pay claims due from it pursuant to subsection (3), its parent corporation, holding company, or person who otherwise

controlled it at the time the distribution was paid, is jointly and severally liable for any resulting deficiency in the amount recovered from that person.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1378 Failure by commissioner to act or make determination; petition for writ of superintending control.

Sec. 1378. A person aggrieved by failure of the commissioner to act or make a determination required by this chapter may petition the Ingham county circuit court for a writ of superintending control.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1379 Violation of chapter; suspension, revocation or refusal to renew license.

Sec. 1379. When it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner, after giving notice and an opportunity to be heard, may determine to suspend, revoke or refuse to renew the insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusion of law.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970.

Popular name: Act 218